

**COLORADO SPRINGS, COLORADO
COUNCIL CHAMBERS – CITY HALL
107 NORTH NEVADA AVENUE
JUNE 1, 2012 – 9:00 A.M.**

The Liquor and Beer Licensing Board met in regular session.

There were present: Mr. Bursell, Mr. Clauss, Ms. Frias, Mr. Kouba, and Ms. Lloyd. Absent, Chairman Stephens and Vice-Chairman Nemeth. Also present, Board Legal Advisor Kenny Hodges. In the absence of the Chairman and Vice-Chairman, Mr. Kouba presided.

COMMUNICATIONS

1. License Enforcement Officer Lee McRae stated that the applicant for item No. 6, 7-Eleven Inc. dba 7-Eleven Store #35610H for a 3.2% Beer License at 7692 Barnes Road, has requested postponement to the Liquor Board meeting of June 15, 2013.

Motion by Clauss, second by Frias, that the hearing for the application of 7-Eleven Inc. dba 7-Eleven Store #35610H for a 3.2% Beer License at 7692 Barnes Road, be postponed to the Board meeting of June 15, 2012. The motion unanimously carried. Absent, Stephens and Nemeth.

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License Enforcement Officer Lee McRae stated that there is a request to bring item No. 8 forward to be heard immediately after item No. 2, for a potential continuance.

MINUTES

2. Motion by Bursell, second by Frias, that the Minutes of the Board meetings of April 6, 2012, April 20, 2012, May 4, 2012, and May 18, 2012 be approved as written. The motion unanimously carried. Absent, Stephens and Nemeth.

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Item No. 8 was called out of order.

8. **Suspension/Revocation Hearing concerning the Tavern Liquor License issued to Music Street Tavern, LLC dba Pale Horse Bar and Lounge, 204 North Union Boulevard.**

Licensee Shawn Hines requested that this item be postponed until after June 16, when he will be released from the Criminal Justice Center.

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City Prosecuting Attorney Kelley Williams entered the City's objection to the postponement; that the Order for Show Cause was served on the establishment on May 3, 2012 and the licensee has been aware since February, 2012 that VNI was investigating him; and that while Rule 19.01 only requires 10 days notice of the hearing, the City has provided ample notice and time for the licensee to obtain counsel and prepare.

In response to questions from the Board, Ms. Williams stated that the Order for Show Cause and subsequent discussion with the licensee on May 19, 2012 was prior to Mr. Hine's current incarceration; and that the licensee has been on notice for several months.

In response to questions from the Board, Mr. Hines stated that the bar is still open and operating pending any action by the Board; that he has been incarcerated since May 10, 2012; that he was attempting to sell the bar and had not secured legal counsel; that he is prepared to go forward today, but would rather have the item postponed in order to obtain counsel; that the Order was received by the potential purchaser of the business which was then passed on to him; that the only attorney he is aware of that handles liquor revocations is also the attorney for the potential purchaser and cannot represent him; and that his expected release date is May 16, 2012, and cannot confirm that he would be able to be released for a June 15 hearing date.

Colorado Springs Police Department Marshall Tracy Stevens stated that the team assigned to escort and accompany Mr. Hines is available to remain until the hearing concludes today.

Acting Chairman Kouba stated that the next available Board meeting for the licensee to appear would be July 20, 2012; that, given the array and severity of the allegations against the licensee, he is concerned that postponing resolution of these charges that far out would not serve the community; that the licensee has been given more than adequate notice to obtain counsel from one of many attorneys in Colorado Springs that regularly appear before the Board; and ordered that the hearing go forward today in the regular agenda order.

TRANSFER APPLICATION

3. **Application of Hamilton Enterprises, LLC dba Chelton Liquor, to transfer the Retail Liquor Store License currently issued to Chelton Liquor, LLC dba Chelton Liquor, 220 North Chelton Road.**

License Enforcement Officer Lee McRae stated that the posting affidavit for this item has not yet been received.

Applicant Robert Hamilton stated that the public hearing notice was indeed posted as required and that the affidavit was accidentally left at the store, but could be produced today.

Acting Chairman Kouba stated that the item could be heard and that any approval of the application would be contingent on the receipt of the posting affidavit.

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Robert Hamilton was sworn and stated that he is the 100% owner and member of the applicant LLC; that he has invested \$60,000, of which said funds were derived from existing personal savings accounts; that he has a one year lease for the 1200 square foot premises; that he has no prior experience in the industry, but has significant related management experience; that he and his 2 additional employees have received certified training in alcohol service; that he is familiar with the Liquor Code.

Motion by Bursell, second by Frias, that the application of Hamilton Enterprises, LLC dba Chelton Liquor, to transfer the Retail Liquor Store License currently issued to Chelton Liquor, LLC dba Chelton Liquor, 220 North Chelton Road, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Stephens and Nemeth.

MODIFICATION OF THE PREMISES

4. **Request by Pizza Plus Downtown, Inc. dba Panino's Restaurant to Modify the Premises of its Hotel and Restaurant liquor license at 604 North Tejon Street.**

Mike Frasca was sworn and stated that he is the 100% owner and president of the company; that he is requesting modification of the licensed premises to accommodate an expansion into the adjacent unit; that he will be adding approximately 1000 square feet to include a waiting area, banquet room, and expanding the kitchen's dish room and storage areas; that the building is owned by a related family entity with a lease back to the company valid through 2021; and that the sidewalk patio will be expanded to include the front of the new space.

Sue Duffy Schwall, Liquor Licensing Professionals, was sworn and stated her company conducted the petition survey which resulted in 68 favoring, 0 opposing, and 0 no opinion signatures.

Motion by Frai, second by Lloyd, that the request by Pizza Plus Downtown, Inc. dba Panino's Restaurant to Modify the Premises of its Hotel and Restaurant liquor license at 604 North Tejon Street, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Stephens and Nemeth.

APPLICATION HEARINGS

5. **Application of Ki Sook Lee dba Sushi O Sushi for a Hotel and Restaurant Liquor License at 3643 Star Ranch Road.**

Attorney Ron Podboy entered his appearance on behalf of the applicant.

Ki Sook Lee was sworn and stated that she the sole proprietor of the restaurant; that she has no criminal record; that she has invested \$40,000, of which said funds were derived from \$20,000 in gift notes from family members and \$20,000 in personal savings; that she has a 6 year lease for the 1400 square foot premises; that she has previous experience in the industry as a manager of a liquor licensed establishment; and that she has received certified training.

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Sue Duffy Schwall, Liquor Licensing Professionals, was sworn and stated her company conducted the petition survey which resulted in 129 favoring, 7 opposing, and 2 no opinion signatures.

Motion by Lloyd, second by Frias, that the application of Ki Sook Lee dba Sushi O Sushi for a Hotel and Restaurant Liquor License at 3643 Star Ranch Road, be approved as it appears all criteria has been met. The motion unanimously carried. Absent, Stephens and Nemeth.

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6. **Application of 7-Eleven Inc. dba 7-Eleven Store #35610H for a 3.2% Beer License at 7692 Barnes Road.**

See action taken earlier in the meeting.

SUSPENSION/REVOCAION HEARINGS

7. **Suspension/Revocation Hearing concerning the Retail Liquor Store Liquor License issued to Lots A' Liquor & Tobacco, Inc. dba Lots A' Liquor & Tobacco, 2308 North Wahsatch Avenue.**

City Prosecuting Attorney Jamie Smith entered her appearance on behalf of the City, and stated that a stipulation has been reached in this matter; that licensee has admitted violation of C.R.S. 12-47-901(a.5)(I), serving to minor; that the agreed to proposed penalty would be a suspension of the license for a period of 15 days, with 3 days served and 12 days held in abeyance for a period of one year on condition of no future violations during that year; that the active served days would be set by the Board upon approval of the stipulation; that there is no additional requirement for certified training for the licensee and employees, as they recently completed that training on May 24, 2012; and that with this second violation in one year, the recommended penalty is in line with existing enforcement policies and State guidelines.

Attorney Erika Kaiser entered her appearance on behalf of the licensee and stated that the licensee admitted guilt to the prior June 29, 2011 violation via a warning letter, and that the 10 year employee, Robert A. Burnett, who had the prior violation was given a second chance, but did again serve to a minor on February 7, 2012 without checking ID and was subsequently terminated by the licensee; and that the District Attorney's Office dismissed the criminal charges due to the mental condition of Mr. Burnett.

Motion by Frias, second by Clauss, that the Board accept the proposed stipulation and adopt the findings, conclusions, and order for suspension of the Retail Liquor Store License issued to Lots A' Liquor & Tobacco, Inc. dba Lots A' Liquor & Tobacco at 2308 N. Wahsatch Avenue; that the license be suspended for a period of 15 days, with 3 days served and 12 days held in abeyance for a period of one year on condition of no future violations during that year; and that the active days of suspension be ordered to begin at 12:00 P.M. June 1, 2012 and end at 12:00 P.M. on June 4, 2012.

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Ms. Kaiser requested that the Board consider a fine lieu of active days served be imposed.

Naleen Gopal was sworn and stated that he is the manager of the store and the licensee takes full responsibility for the violation; that Mr. Burnett was hired in 2000, and had an exemplary employee with a background in law enforcement; that after the first violation, it appeared to be an isolated instance; that after the second violation, he was terminated, but also was given neuropsychological evaluations that determined the early stages of Alzheimer's; that the public morals and welfare would not be impaired by the imposition of a fine in lieu of active suspension days served; and that the books and records are in good order to determine the appropriate fine.

In response to questions from the Board, Mr. Gopal stated that all the employees have received certified training; and that there are cameras in the store that are regularly checked for employee compliance.

Ms. Smith stated that the City does object to the fine in lieu of suspension in this case; that the reasons for the criminal case dismissal by the DA have not been able to be verified; that the licensee was on notice after the first violation regarding the abilities of the employee and the second violation within a year's time is evidence that the licensee did not correct the failure to check IDs; that it is the responsibility of the licensee to be able to cope with busy and stressful situations and a mental health evaluation of an employee conducted some 9 months after the violation does not absolve that responsibility; and that the public morals welfare would be negatively impacted, and a fine in lieu would not achieve the desire disciplinary purposes.

Mr. Clauss, Mr. Bursell, and Ms Frias noted their opposition to a fine in lieu of active suspension.

Ms. Lloyd and Mr. Kouba noted their agreement with the request for a fine in lieu.

Motion by Clauss, second by Frias, that the Board stay the active suspension order and approve a review of the books and records to determine and consider an appropriate fine in lieu, and that the Board set the matter to be heard at the next Board meeting of June 15, 2012. The motion unanimously carried. Absent, Stephens and Nemeth.

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8. **Suspension/Revocation Hearing concerning the Tavern Liquor License issued to Music Street Tavern, LLC dba Pale Horse Bar and Lounge, 204 North Union Boulevard.**

See preliminary proceedings from earlier in the meeting.

City Prosecuting Attorney Kelley Williams stated that the 100% owner and managing member of Music Street Tavern, LLC, Shawn Hines, failed to comply with 1 C.C.R. 203-2, Regulation 47-310(d) to fully, faithfully, truthfully submit information to the local licensing authority as required by 1 C.C.R. 203-2, Regulations 47-304(A) and 47-314(B) regarding change in ownership structure for Limited Liability Companies, specifically that in license

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application documents, Mr. Hines failed to disclose prior criminal convictions; that he failed to disclose that his driver's license had been suspended in Virginia and revoked in Colorado; that the licensee also failed to meet its obligation as a Tavern by not having sandwiches and light snacks available as required in C.R.S. 12-47-412(1), and failed to comply with the State licensing Authority's request for book and records as required in C.R.S. 12-47- 701; that these violations characterize the licensee's past and continued disregard for the law.

Mr. Hines stated that the charges referenced by the City were from when he was younger, and he has learned a lot since then; that his current incarceration for DUI and driving on a revoked license is from his return from war and Fort Bliss; and that he is trying to change his life.

License Enforcement Officer Lee McRae was sworn and stated that the current Tavern Liquor license for the LLC expires February 22, 2013; that an application for change in ownership structure and registered manager was received on December 5, 2011 with accompanying support documents and required signatures and oaths.

City Exhibits No. 1 (Report of Ownership Changes), No. 2 (Applicant Interview), No. 3 (Individual History Record), No. 4 (Report of Registered Manager Change), No. 5 (Manager Registration), No. 6 (Virginia Summons from Chesterfield, VA for suspension of license), No. 7 (Virginia summons and conviction from Chesterfield, VA for driving while suspended), No. 8 (Virginia summons and conviction from Chesterfield, VA for petty larceny), No. 9 (Colorado Driver's History), and No. 10 (Demand for production of books & records) were admitted into evidence.

State Liquor Enforcement Division Criminal Investigator Russ Elliott was sworn and stated that, based on a complaint from CSPD crime analysis, he conducted an investigation on the establishment, including the background information on the change in ownership and management; that the only conviction that Mr. Hines disclosed on any required documents was for a DUI, with no attachments; that Mr. Hines marked no on driving history record charges or convictions; that all applications for change documents contain an oath that stated that the applicant declares, under the penalty of perjury, that the application and all attachments are true, correct, and complete, and that any falsehood or omission constitutes evidence regarding the character of the applicant; that all of the submitted documents were signed and dated by Shawn Hines as the owner and manager; that he received official documents regarding Mr. Hines and found convictions that were not disclosed on any of the application documents, including suspension of a Virginia driver's license, conviction of driving on a suspended VA license, larceny conviction from VA, and revocation of Colorado driver's license; that during an interview, Mr. Hines stated that since the convictions were from 2006, he didn't think he had to disclose them; and that Mr. Hines arrived at the interview by driving on the revoked Colorado driver's license.

Colorado Springs Police Department Detective Greg Young was sworn and stated that during an interview and inspection of the premises, Mr. Hines admitted that he was aware that he was driving on a revoked Colorado driver's license; and that the tavern appeared to not have adequate food stock to comply with the sandwiches and light snacks requirement of the Liquor Code.

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State Liquor Enforcement Division Criminal Investigator Brian Osterhouse was sworn and stated that, after discussion with Mr. Hines, he personally served a request for production of books and records for the Pale Horse Bar and Lounge on April 16, 2012 to employee Vicki Pipken; that a previous attempt to serve the order was unsuccessful due to the bar being closed; that the document request was for invoices and records regarding food purchases to assist in determining if adequate food was available by the licensee; and that the deadline for the production was April 25, 2012, however no documents have been received to date.

Mr. Hines stated that during the VNI inspection, the tavern was closed and he had not yet re-stocked the food supplies; that he filled out the application documents with the information that he felt was pertinent, and did not at the time understand the requirement for full disclosure; that had he known, he would have provided that information; that he was being trained by the former owner who was in a hurry to sell the bar, and he did not understand what was needed to apply for and operate a liquor licensed establishment; that he had a vending machine at the premises to dispense packaged chips and snacks through a third party vendor; that he only would get items such as hot dog buns from the 7-Eleven across the street as they were needed; that the previous driving charges and convictions were a result of being young and eager, but hopes that the Board would not see that as a deterrent to him maintaining the liquor license; that he thought if there were any questions on his background, someone would have contacted him for explanation; that he apologizes for the incomplete information on the application documents; and that he had the requested documents, but failed to produce them because he did not understand the importance of the request or the due date.

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Board Member Frias was excused.

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In response to questions from the Board, Mr. Hines stated that although he did speak with Investigator Osterhouse about the document request, he never saw the order that was given to his employee; and that he joined the military to help get him out of bad patterns and on the right track.

In response to questions from the Board, Mr. McRae explained the difference between an application for transfer of a liquor license that the Board would hear, and a change in the ownership structure of an existing licensee that would not come before the Board unless there was a problem or issue, as is the case today.

In response to questions from the Board, Detective Young explained the background check and review process for owners and managers of liquor licenses, and that the preliminary background check in this case resulted in a statement of no objection at this time, pending further reports and review.

Ms. Williams stated that the evidence presented proves that the violations occurred; that by failing to disclose critical background information, the licensee has shown that he is not qualified to be afforded the privilege of a liquor license; and that Mr. Hines has continued demonstration of disregard and failure to comply with laws and regulations, as evidenced by

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knowingly driving on a revoked driver's license and not providing required documentation as ordered, or meeting the obligation of a liquor licensee.

Mr. Hines stated that he has no felony record and hopes that the City would give him another chance to prove he can be a good business owner and do something good for the City.

Acting Chairman Kouba closed the evidentiary portion of the hearing, and stated that based on the testimony presented, there has been no contest to the actual violations as alleged that the applicant is under an obligation to be truthful and complete in providing information; that in his opinion, the violations in counts one through five and seven have been proven; that count six on the failure to provide sandwiches and snack was based on an inspection while the establishment was closed, and there could have been food available later during business hours, but the failure to provide the documentation to prove such a circumstance is troubling, and does not reach the required burden of proof.

Mr. Clauss stated that he feels charge number six has not been proven, but the other charges are serious violations of the privileged class license.

Mr. Bursell stated the he also felt that charges one through five and seven have been admitted to by Mr. Hines and are therefore proven.

Ms. Lloyd stated that intentionally or not, the failure to provide full disclosure on application documents for a highly regulated industry is a serious issue.

Motion by Bursell, second by Clauss, that based on the evidence and testimony presented, the violations as listed in items one through five and seven on the Order for Show Cause have been proven, and the Board make a finding of guilt, and a finding of no guilt on item six. The motion unanimously carried. Absent, Stephens, Frias, and Nemeth.

Ms. Williams stated that the City would request revocation of the liquor license; that Mr. Hines did not fail to disclose just one piece of information, but several convictions and violations that speak to his moral character; that his ongoing disregard and failure to comply with the requirements and obligations of a liquor licensee shows that he is not able to conduct the business according to law; that this character, record, and reputation show that repeated violations are likely and, therefore is a person prohibited as a licensee.

Mr. Hines stated that revocation of the license is too harsh, and that the penalty should be a suspension for not more than a month.

Motion by Clauss, second by Bursell, that the Tavern Liquor License issued to Music Street Tavern, LLC dba Pale Horse Bar and Lounge, 204 North Union Boulevard be revoked, effective at 2:00 P.M. on June 1, 2012. The motion unanimously carried. Absent, Stephens, Frias, and Nemeth.

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RENEWAL HEARING

9. **Renewal Hearing concerning the Tavern Liquor License issued to Bubbles Night Club, LLC dba Bubbles Night Club, 1110 East Fillmore Street.**

City Prosecuting Attorney Kyle Sauer entered his appearance on behalf of the City.

Licensee owner Michael Turner requested a postponement of this item to the next Board meeting date.

Mr. Sauer stated that the City would object of any continuance of the renewal hearing, as the licensee has had more than adequate time to seek legal counsel, and also due to the nature of violations such as failure to have a valid Health Department License that has been ongoing for more than a year; that every day the tavern stays open the licensee is committing a criminal violation of operating without all required licenses; and that it is of vital importance that this matter be handled today.

Mr. Turner stated that he is the sole owner and only manager of the bar; that he was out of town when the order for hearing was served; and that none of his employees notified him of the order.

Mr. Sauer stated that the license expired on May 10, 2012, and the renewal hearing has stayed that expiration pending the action of the Board; and that continuing operations pending a future hearing date could cause additional counts to be added to the list of violations for the Board to consider.

Board Legal Advisor Kenny Hodges stated that Rule 14.03 regarding renewal hearings gives the Board the discretion to order the licensee to not sell beyond the expiration date of the license pending any continuance of the hearing and decision by the Board.

Mr. Turner stated that instead of closing immediately for at least two weeks, he would rather proceed today and withdraws his request for continuance.

Mr. Sauer stated that the City has filed objections to the renewal of the liquor license issued to Bubbles Night Club; that for the entire year of 2011 and to date, the licensee has been operating without a valid Retail Food Establishment license, which is required for the food component of a Tavern liquor license; that despite numerous attempts from the Health Department to resolve the issue, the licensee has failed to comply; that the licensee has also failed to meet the obligation timely remittance of Sales Tax, resulting in the temporary seizure of the property and, therefore, the licensee failing to meet the obligation of maintaining possession of the premises as required; and that as the licensee has failed to comply with at least two fundamental requirements for liquor licensing, the City would ask that the renewal application for the Tavern Liquor License be denied.

Mr. Turner was sworn and stated that the allegations are correct; however the issue stems from a bounced check to the Health Department that was not resolved; that he received no notice of the Health Department hearing concerning the matter; that the fees and fines due now total more than \$2700 and he intends to partially satisfy that debt today; that he had

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hard lessons in running the new business; and that he has made some mistakes that have been corrected, such as the Sales Tax delinquency.

License Enforcement Officer Lee McRae was sworn and stated that the Tavern Liquor License expired on May 10, 2012; that the City Clerk's Office did receive an application for renewal approximately two weeks prior to that date in violation of the requirement to submit renewal applications at least 45 days prior to the expiration date; that the renewal application was initially rejected for the licensee's failure to pay the required 2012 Occupational Tax on Liquor, and failure to remit Sales Taxes collected by the licensee; that Mr. Turner did pay the delinquent Occupational Tax on Liquor with late fee on or about May 3, 2012, and the renewal application was then accepted; that the City Clerk's Office received notice of objection to the renewal from City Sales Tax for delinquency, and from the Office of the City Attorney for the licensee's failure to maintain the required Health Department license in full force and effect; that on May 16, 2012 he personally served the Notice of Objections and Renewal Hearing to Ryan Bishop at the establishment as well as posted the required Public Hearing Notice on the door of the establishment; that Mr. Bishop purported to be the bar manager at the time; that when Mr. Turner submitted the renewal application to the City Clerk's Office, he was informed at that time that this matter would likely be set for a renewal hearing before the Liquor Board; that on May 18, 2012, an amended Notice of Objection and Renewal Hearing was mailed by both first class and certified mail to both the business and home addresses of the licensee; and that the amended notices were mailed instead of being personally served, as the Sales Tax division was scheduled to seize the property and the establishment might not be open.

Tom Gonzales was sworn and stated that he is the Environmental Health Division Director for the El Paso County Health Department; that a Food Establishment License was issued in good faith on May 24, 2011, however that license was invalid due to insufficient funds for the payment of the license fees; that attempts were made to collect payment; that as a result of an inspection on July 20, 2011, it was determined that Bubbles was operating a food establishment without a valid license, and the establishment was again informed of the delinquency and invalidation of the license; that in August of 2011, a notice on noncompliance was sent to Bubbles Night Club regarding the failure and outlining the civil penalties; that numerous attempts were made to bring the licensee into compliance; that additional civil penalties were assessed for continued noncompliance; that the 2011 assessments have not been paid, nor was any 2012 license fee or subsequent penalty paid; that on March 16, 2012, the department held a hearing with proper notice on the matter where Mr. Turner and the property owners failed to appear; and that the Determination and Order was served on both Mr. Turner and the property owners with copies to the Colorado Springs City Attorney and the Chief Deputy District Attorney.

City Exhibit No. 1 (Administrative Findings of Fact and Order) was entered into evidence.

Colorado Springs Police Department Detective Nick Bayne was sworn and stated that on May 4, 2012, he received a complaint that Bubbles Night Club was serving food without a Health Department License; that he verified the non-compliance with the Health Department; that he conducted an onsite investigation on May 7, 2012 to determine food service availability and compliance; and that he was able to order and receive cheese fries and ice.

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Colorado Springs Sales Tax Investigator Belinda Wallner was sworn and stated that Bubbles first obtained a City Sales Tax license in April of 2011; that Bubbles has a history of incomplete tax return filings; that neither assessed amounts nor actual figures were received; that she had several conversations with Mr. Turner regarding Sales Tax compliance and responsibilities; that after more than four months delinquency, and insufficient funds, the department proceeded to effect the seizure of the business on May 18, 2012, including changing the locks; that during the approximate eight hours of the time of seizure, the possession of the premises was by the City of Colorado Springs; and that the delinquency of approximately \$2,000 was cured by electronic transfer of funds and the possession of the premises and keys were returned to Mr. Turner at about 5:00 P.M. that same day.

Mr. Turner stated that in his discussions with the Health Department regarding the fee delinquency, he understood that he could go to hearing and at that time request waiving of penalties; that he never received notice of the hearing, so did not appear to request that waiver; that he found out about the hearing and order after the fact; that he intended to pay that delinquency this morning, however recent personal emergencies and poor cash flow have prevented full payment; that he has a 2011 Retail Food Establishment hanging on his wall, but did not realize that the delinquency invalidated the license; that he spoke with the Health Department five or six times prior to the March 16, 2012 hearing regarding the delinquency; that he was aware of the delinquency but objected to the penalties; that he did tell Mr. Gonzales he would be in to pay the fees, however he never followed through and paid the delinquency; that he acknowledges that he was delinquent in the remittance of Sales Taxes that lead to the seizure of the business, but was in Florida at the time and cured the delinquency the same day as the seizure; and that he didn't realize how serious the situation was.

Mr. Gonzales was recalled, and stated that a Food Establishment License was issued on May 24, 2011, however the resulting insufficient funds did invalidate that license, and Mr. Turner was notified of that fact by a Health Department inspector on July 20, 2011; and that the non-compliance notice of August 26, 2011 also included notification that the license was not valid and would not be valid until all fees and penalties were received.

City Exhibit No. 2 (Heath Department Notification) was entered into evidence.

Mr. Sauer stated that based on good cause as defined in C.R.S. §§12-47-103(9) (a) and 12-47-302(1), and evidenced by the violations and failure to comply with the terms and conditions of a Tavern liquor license, including not having all applicable licenses in full force and effect, the renewal application for the Tavern Liquor License issued to Bubbles Night Clubs, LLC should be denied; that the establishment operated without a valid Retail Food Establishment license from the El Paso County Health Department, for the years 2011 and 2012 as required in C.R.S. §25-4-1610(b) and 1 C.C.R. 203-2, Regulation 47-902; that by not legally being able to serve food at the establishment, that failure also constitutes a failure to meet a basic requirement of a Tavern license for service of sandwiches and light snacks as required in C.R.S. §12-47-412(1); and that it is uncontested that the licensee failed to maintain possession of the premises in violation of C.R.S. §12-47-301(3)(b) when it was seized by City Sales Tax.

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Mr. Turner stated that he wants to take care of all delinquencies and not lose the liquor license.

Acting Chairman Kouba closed the evidentiary portion of the hearing.

Mr. Clauss stated that in his opinion, the City has proven that good cause exists to deny the renewal application.

Mr. Bursell stated that, based on the evidence and testimony presented, the City has overwhelmingly proved their case and that there is a demonstrated inability to operate the business in accordance with law by failing to have the food service license for more than a year and losing possession for nonpayment of taxes.

Ms Lloyd stated that she agrees that City has good cause to deny the renewal application.

Acting Chairman Kouba stated that a licensee cannot hold himself incommunicado with the officials of the City and County who are trying to assist him to achieving compliance, and then expect to retain the privileges of a Tavern Liquor License, and would support a finding of good cause for denying the renewal application.

Motion by Clauss, second by Lloyd, that based on good cause, the renewal application for the Tavern Liquor License issued to Bubbles Night Club, LLC dba Bubbles Night Club, 1110 East Fillmore Street, be denied and the license not be renewed. The motion unanimously carried. Absent, Stephens, Frias, and Nemeth.

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At 2:33 P.M., there being no further business, the

BOARD ADJOURNED

Lee McRae
License Enforcement Officer